United Nations CED/C/SR.198

International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
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Original: English

Committee on Enforced Disappearances
Twelfth session

Summary record (partial)* of the 198th meeting
Held at the Palais Wilson, Geneva, on Monday, 6 March 2017, at 10 a.m.

Temporary Chair: Mr. Walker (Representative of the Secretary-General)
Chair: Mr. Corcuera Cabezut

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 10.05 a.m.

Opening of the session

1. **The Temporary Chair** declared open the twelfth session of the Committee on Enforced Disappearances.

2. **The Temporary Chair**, speaking in his capacity as the Chief of the Civil, Political, Economic, Social and Cultural Rights Section, Human Rights Treaties Division, Office of the United Nations High Commissioner for Human Rights (OHCHR), said that there had been a number of important developments concerning the Convention and the Committee since the eleventh session. The Conference of the States Parties to the Convention had convened for its first session in December 2016; at the session, the functioning of the Committee had been evaluated positively and the Committee had been confirmed as the body responsible for monitoring the implementation of the Convention. Representatives of 22 of the 51 States parties present had taken the floor to praise the Committee's dynamism and efficiency and to offer constructive criticism.

3. The commemoration of the tenth anniversary of the Convention had continued with a high-level plenary meeting of the General Assembly on 17 February 2017 at which the Chair of the Committee had delivered a statement and served, together with Mr. Decaux and others, on an expert panel. Addressing the meeting by way of a video message, the United Nations High Commissioner for Human Rights had stated that although enforced disappearance, which was taking new and alarming forms, was not becoming less common, the Committee's work had had a significant preventive effect. Calling on all States to recognize the value of the objectives of the Convention, he had set a goal of doubling the number of States that had ratified the Convention within five years. Signatory States that had accepted the recommendation made within the framework of the universal periodic review to ratify the Convention were being targeted by a campaign, organized in the wake of the High Commissioner's call, to encourage them to complete the ratification process.

4. Since the eleventh session, four States — the Central African Republic, Switzerland, Seychelles and Czechia — had ratified or acceded to the Convention, bringing the number of States parties to 56. The slow but steady increase in the number of States parties was gratifying, but it was hoped that the High Commissioner's call would lead to a swifter increase in the number of States parties in the near future. OHCHR would support the effort to increase the number of ratifications and the visibility of the Committee's work through a ratification campaign that would be the Office's main communication strategy for 2017. Committee members would have the opportunity to share their thoughts on the design of the campaign.

5. Later in 2017, the General Assembly would decide whether to allocate the necessary resources for the Committee to meet for an additional week in the biennium 2018-2019. Although the Secretary-General's report on the status of the human rights treaty body system had noted that staffing levels had proved insufficient for addressing requests for urgent action and other matters (A/71/118, paras. 45-48), it had become clear that States were unwilling to allocate additional funding for handling urgent action requests before the review of General Assembly resolution 68/268 in 2020. In the run-up to the review, the Committee would do well to formulate some ideas of its own for a more sustainable treaty body system.

6. Lastly, he wished to bid farewell and pay tribute to the Committee members whose terms would end in June 2017, namely, Mr. Al-Obaidi, Mr. Hazan, Mr. López Ortega and Mr. Yakushiji. He trusted that they would continue to build on what they had achieved as members of the Committee.

7. *Mr. Corcuera Cabezut took the Chair.*

8. **The Chair** said that the Committee would consider the reports of Cuba, Senegal and Ecuador during the session. It would also adopt the lists of issues in relation to the reports submitted by Lithuania and Gabon. In addition, it would discuss its methods of work and a number of substantive matters, including the remarks on the Committee's work made by several States parties during the Conference of the States Parties in December 2016.

9. Many of the States that had attended the high-level plenary meeting of the General Assembly were not parties to the Convention. The Committee would have to do its part to ensure that all States Members of the United Nations ratified the Convention and that the High Commissioner's goal of doubling the number of ratifications in five years was attained.

10. To date, just six candidates, only one of whom was a woman, had been put forward for the five seats on the Committee that would become open in June 2017. Although States parties had been encouraged to nominate candidates by 3 February, that date had not been intended as a firm deadline. He therefore called on States parties that had not yet done so to nominate experts of high moral character and recognized competence in the field of human rights.

11. The work of the Committee required urgent support. The Committee, like other treaty bodies, needed sufficient resources to deal with an increased workload and the backlog that had accumulated. The secretariat should have the staff and other resources necessary to handle reports, requests for urgent action and other matters.

12. The Committee's public meetings were now streamed over the Internet and that was a significant and welcome development. Stakeholders unable to attend the sessions in Geneva were thus able to follow the Committee's work from anywhere in the world.

13. **Mr. Decaux** said that he had moderated the panel discussion at the high-level plenary meeting of the General Assembly to commemorate the tenth anniversary of the adoption of the Convention and that the many useful statements that had been made were accessible online. He welcomed the High Commissioner's call to double the number of ratifications of the Convention in five years. That would mean some 10 ratifications a year rather than 5 or 6, but the Committee was now able to press ahead more freely as it was no longer facing the pressure of an upcoming evaluation of its functioning.

14. Attaining the goal set by the High Commissioner would require considerable effort, including on the part of the States that were members of the Group of Friends of the Convention and regional organizations in Africa, Europe and the Americas. Non-governmental organizations and national human rights institutions, not to mention Committee members themselves, would also have to be heavily involved in those efforts. In that regard, the members who would be leaving the Committee could be very useful ambassadors for the Convention.

Adoption of the agenda

15. *The provisional agenda* (CED/C/12/1) *was adopted.*

Minute of silence in remembrance of victims of enforced disappearance

16. *At the invitation of the Chair, the members of the Committee observed a minute of silence in remembrance of victims of enforced disappearance.*

The discussion covered in the summary record ended at 10.30 a.m.

United Nations CED/C/SR.199

International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
13 March 2017

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Committee on Enforced Disappearances
Twelfth session

Summary record of the 199th meeting
Held at the Palais Wilson, Geneva, on Monday, 6 March 2017, at 3 p.m.

Chair: Mr. Corcuera Cabezut

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Initial report of Cuba

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The meeting was called to order at 3.10 p.m.

Consideration of reports of States parties to the Convention

Initial report of Cuba (CED/C/CUB/12/1; CED/C/CUB/Q/1 and Add.1)

1. *At the invitation of the Chair, the delegation of Cuba took places at the Committee table.*

2. **Mr. Pedroso Cuesta** (Cuba), introducing the initial report of Cuba (CED/C/CUB/12/1), said that the report had been drafted through a participatory process involving broad consultations with, among others, representatives of government institutions, the legislative branch and non-governmental organizations (NGOs). Until 1958, and especially under the Batista dictatorship, enforced disappearance had been a common practice on the part of the Cuban authorities. However, the Cuban Revolution had put an end to that State practice. Since 1959, the guarantee of the right to life, respect for the physical and mental integrity of the individual and protection of citizens' interests had constituted one of the pillars of the Revolution. Accordingly, there were no cases of enforced disappearance or secret detention in Cuba.

3. Cuba had participated actively in the negotiations on the Convention: it was one of the main co-sponsors of the resolution on the adoption of the Convention and one of the first 10 countries in the world to ratify it, which it did in February 2009. The Cuban legal system embodied universally recognized safeguards for the protection of human rights, as well as material safeguards for the latter's effective exercise, and the Cuban Constitution protected human dignity as a cardinal value. The laws of Cuba sought to prevent the acts prohibited by the Convention and established penalties for those who committed them; Cuba would never permit its territory to be used as a base for their commission. Laws to protect the population against enforced disappearance were therefore not subject to exceptions in the event of war, internal political instability or any other public emergency.

4. Severe penalties were imposed for acts that violated the life, physical integrity or freedom of persons, and aggravating circumstances were considered to exist when such acts were committed against a child, were the result of an abuse of power, exploited the defencelessness of the victim or were committed by a public servant. The freedom and inviolability of the person were guaranteed to everyone who resided in the national territory, and no one could be subjected to arbitrary detention. The deprivation of a person's liberty was conducted in accordance with criminal procedure and extensive due process guarantees, which were in conformity with international standards, including the ability to challenge the legality of detention by means of a petition for habeas corpus. Between 2010 and the first quarter of 2016, the Cuban courts had considered 88 writs of habeas corpus, finding in favour of the petitioners and ordering the immediate release of the persons detained in four cases, without prejudice to the criminal accountability of those accused.

5. Protection and assistance were provided to victims, complainants and witnesses of any criminal offence from the outset of criminal proceedings. In addition, an automated system had been instituted to provide reliable public services and information concerning the arrest, execution of penalties and pretrial detention of all individuals. That system, together with the maintenance of other official registers and the case files for all persons deprived of their liberty, combined to ensure that Cuba met the requirements set forth in article 17 (3) of the Convention.

6. Although there were no cases of enforced disappearance in Cuba, the Government was aware that much work still remained to be done. It continued to make progress in implementing its obligations under the Convention, including through efforts to amend and update the Criminal Code, in particular so as to provide for a more explicit characterization of the crime of enforced disappearance. In the meantime, other offences, whose constituent elements could be equated with the commission of the acts proscribed by the Convention, served to offset the lack of a definition of enforced disappearance as a separate offence.

7. Any person under arrest or investigation or subject to prosecution or detention enjoyed due process guarantees, and prosecutors ensured the protection of the rights of victims or injured parties. All persons taken into custody underwent a medical examination,

and any prisoner who presented injuries was required to be issued a medical certificate listing the cause of such injuries. Articles 272 to 274 of the Criminal Code prescribed penalties for anyone found guilty of mistreating a prisoner, and documentary evidence of investigative measures could be challenged on the basis of allegations of ill-treatment; in such cases, a medical examination was automatically performed. In addition, investigative commissions were established when there was reason to believe that public servants or agents had been involved in inflicting such ill-treatment.

8. Cuba ensured through both legal and practical measures that all prisoners received decent and fair treatment. Stiff penalties were imposed on prison staff who failed to comply with such measures, and strict compliance with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) was expected. All persons who were deprived of their liberty received free medical treatment.

9. A progressive scheme was used in overseeing custodial sentences. Focused particularly on young persons, it was aimed at promoting education and fostering positive behaviour among prisoners with a view to their early release and full social reintegration. All prison facilities were subject to independent inspection by judges and prosecutors; military prisons were subject to inspection by military prosecutors. Any infractions observed resulted in an order to rectify the unlawful situation and engaged the criminal and administrative responsibility of the public servants involved.

10. Children and adolescents received priority attention in Cuba, and a comprehensive system had been developed to provide them with broad protection. The Criminal Code defined as an offence the substitution of one child for another, as well as the sale and trafficking of children. Concerning adoption, preference was given to Cuban couples who could not conceive and wished to adopt a child. Given the strictness of the adoption process in Cuba, there were no cases of illegal adoption.

11. Cuba had concluded a total of 11 extradition treaties and 27 agreements on mutual legal assistance, 16 of which provided for extradition. It also recognized the Bustamante Code of Private International Law of 1928, whose section 3 regulated extradition. Cuba had opted against using the enumerative method for the offences covered by such agreements so as to encompass all designations of offences, irrespective of their description in national laws.

12. Training provided to medical staff, prison staff and directors, the police, public servants, criminal investigation officials and civil and military law enforcement officers incorporated courses in international human rights instruments, including the International Convention for the Protection of All Persons from Enforced Disappearance, in keeping with article 23 of the Convention. The Government would continue its efforts to make improvements and meet the challenges it faced in furthering the full enjoyment of human rights for all citizens in Cuba.

13. **Mr. López Ortega** (Country Rapporteur) said that he would welcome more details concerning the consultative process used to draft the State party's report, particularly the way in which the Government had structured its dialogue with civil society organizations. He wished to know whether it had sought the views of associations that represented imprisoned or detained persons, religious organizations that assisted such persons or NGOs that were internationally recognized for their principled approach, such as Human Rights Watch or Amnesty International, or others working at the regional level.

14. Given that the State party had not made the declarations provided for in articles 31 and 32 of the Convention relating to the Committee's competence to receive and consider individual and inter-State communications, he would be interested to know what difficulties it might have encountered in that regard. He wished to stress the importance of several other international instruments that the Committee considered essential for ratification by all States parties to the Convention in order to ensure that all citizens under their jurisdiction enjoyed the rights recognized therein. Those instruments were the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights and the Rome Statute of the International Criminal Court.

15. Although the system in place in Cuba for promoting and protecting human rights fulfilled an undeniably important function, both the Committee and the international community in general were of the view that an independent national human rights institution that functioned as a supervisory body was essential for guaranteeing the human rights of all citizens. While acknowledging the studies being conducted by the State party in connection with the amendment of the Criminal Code, one aim of which was to incorporate a more explicit characterization of the offence of enforced disappearance, he noted that the Code's current fragmented approach to the penalization of enforced disappearance weakened the protection it afforded to individuals. Such an approach could never offer as much protection as that offered by legislation that had been brought into strict conformity with the Convention. Particularly rigorous adherence was needed in terms of specifying in the national legislation the various forms of enforced disappearance that were referred to in the Convention and the way in which they were interpreted by the Committee. That included the forms of enforced disappearance covered by articles 2, 3 and 5 of the Convention.

16. While reiterating the importance of an independent judiciary in guaranteeing the effective investigation of cases of enforced disappearance, he would like to draw the delegation's attention to the Committee's 2016 statement on enforced disappearance and military jurisdiction in which it reaffirmed that military jurisdiction ought to be excluded in cases of gross human rights violations, including enforced disappearance. Given that the Committee had observed that military jurisdiction in the State party was extraordinarily broad, and even though military courts could defer jurisdiction to the ordinary courts, which they, in fact, frequently did, the State party should nevertheless, as a matter of principle, exclude cases of enforced disappearance from military jurisdiction. Such exclusion would be in keeping with the provisions of other international human rights instruments as well. Along those lines, he wished to know what progress the State party had made in implementing the recommendation made to it by the Committee against Torture in its 2012 concluding observations (CAT/C/CUB/CO/2, para. 18) to the effect that legislative measures should be adopted to guarantee the independence of the judiciary. According to articles 121 and 122 of the Cuban Constitution, the judiciary was hierarchically subordinate to the National Assembly of People's Power and to the Council of State, thus creating a lack of structural independence. The independence of the judiciary was an essential guarantee not only for a democratic State but also for ensuring the effectiveness of criminal investigations into the offence of enforced disappearance.

17. **Mr. Figallo Rivadeneyra** (Country Rapporteur), referring to existing legal measures used to protect the population from acts of enforced disappearance, said that he would appreciate it if the delegation could explain how those measures could potentially give rise to confusion or allow legal loopholes that might constitute cause for concern by the Committee. For example, he wished to know how the State party's assertion in its replies to the list of issues (CED/C/CUB/Q/1/Add.1) to the effect that a state of emergency could not be used as justification for a failure to observe the principle of the non-derogability of rights related to enforced disappearance could be reconciled with Act No. 75. Article 10 of that Act provided that, during a state of exception, the National Defence Council had the discretion to adjust the rules concerning the exercise of the right to the inviolability of the home or the deprivation of liberty in accordance with the particular circumstances of the state of exception. He requested clarification as to how, in such circumstances, judicial guarantees to prevent arbitrary arrest or detention were maintained.

18. With regard to statutory limitations, he was concerned that article 64.1 of the Criminal Code was not in conformity with article 8 of the Convention in that it indicated that the term of limitation for prosecuting a case of unlawful deprivation of liberty commenced from the moment when the criminal act was committed, and not from the moment when the commission of an offence of enforced disappearance had been brought to the attention of the authorities. The term of limitation for bringing criminal proceedings in cases of enforced disappearance that constituted a crime against humanity was even more pressing an issue, inasmuch as there were some gaps in the characterization of crimes against humanity in the State party's legislation.

19. As to the responsibility of superiors, the State party had indicated in its replies to the list of issues that its criminal legislation prescribed penalties for the failure to report an offence and for concealment. However, that indication seemed to be contradicted by articles 117 and 168 (2) of the Code of Criminal Procedure, which exempted certain persons from the duty to report an offence or certain public servants from testifying as witnesses on account of the confidentiality that they were bound to maintain by virtue of their functions. Such provisions could give rise to an exception to the State party's obligation to report a suspected act of enforced disappearance; that undermined the protection provided against such acts and also violated the Convention.

20. On the subject of due obedience to superior orders, he asked whether a protocol had been established to guide civilian or military public servants in cases where they might receive an order to perform an unlawful act. He would appreciate clarification of the State party's position on the matter of suspending or dismissing public servants from their post when they were implicated in an investigation, as well as on the impact that an excessive esprit de corps within the force or organization to which a public servant belonged might have on the conduct of an investigation. He requested additional information as to whether a witness protection system had been established in the State party; if not, it was important to establish one, given that the lack of such a system often prevented individuals from lodging a complaint.

21. **Mr. Hazan** said that he wished to commend Cuba for the solidarity it had shown in the past with other Latin Americans who, to escape becoming victims of enforced disappearance in their home countries, had been welcomed to its territory. He asked for details concerning the four cases of habeas corpus in which the court had found in favour of the petitioners and whether, with regard to the cases of enforced disappearance that had occurred prior to 1959, any criminal action had been brought, penalties imposed or reparation made to the victims. Given the indication in the report that, pursuant to Cuban law, a request for the extradition of a Cuban citizen who was accused of having committed an enforced disappearance in a foreign country would be rejected by the State party, he wished to know whether any legal mechanism had been established according to which persons whose extradition was requested for an offence could be tried in Cuba for that offence.

22. **Mr. Yakushiji** said that the definition of the offence of enforced disappearance comprised three essential elements: first, some form of deprivation of liberty; second, the involvement of the State, including its acquiescence; and third, a refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the person. He asked how those three elements, in particular the element of concealment, were taken into account when the definitions of the offences involving deprivation of liberty under articles 279 to 283 of the Criminal Code were applied, especially in order to determine the corresponding penalties and to determine the duration of the statute of limitations in respect of criminal proceedings for those offences. He would appreciate it if the delegation could provide information on whether the amendment of the Criminal Code referred to in paragraph 85 of the report included not only all three constituent elements of the crime of enforced disappearance but also produced all the legal effects referred to in the Convention.

23. **Mr. Huhle** said that, even though there were no cases of genocide or apartheid in Cuba, the State party nevertheless defined them as offences under its criminal legislation. He asked why it had not done the same for the crime of enforced disappearance, which, in his view, it was more urgent to do, since the penalties for the various elements of the offence of enforced disappearance under the Criminal Code varied widely in terms of their severity and in terms of the statutory limitations in respect of each offence.

The meeting was suspended at 4 p.m. and resumed at 4.20 p.m.

24. **Mr. Amorós Núñez** (Cuba) said that the collective effort to draft the State party's report had taken one year and had been carried out by a working group coordinated by the Ministry of Foreign Affairs. A group of NGOs had provided feedback on a draft report that had been submitted to a civil society forum organized by several NGOs. As there were several thousand Cuban NGOs working in various fields in Cuba, only those working in areas related to the Convention had participated in the process. The process had not

included associations of persons deprived of their liberty, as no such associations existed in Cuba, nor had it included any large international NGOs, as participation had been based primarily on the criterion of familiarity with the current situation in Cuba. Among those consulted had been the Unión Nacional de Juristas Cubanas (Cuban bar association), the Federation of Cuban Women and a group of organizations coordinated by the Asociación Cubana de las Naciones Unidas (Cuban association in support of the United Nations), including some religious organizations. There were no organizations in Cuba whose work focused specifically on the implementation of the Convention simply because there had not been any cases of enforced disappearance in Cuba; however, the views of large legal organizations that had considered the topic had been included in the report.

25. **Mr. Escandón Carro** (Cuba) said that Cuba had a broad inter-institutional system that ensured that all complaints and reports of violations of human rights lodged by citizens, or legal questions submitted by them, were received, processed and followed up. The system was headed by the Office of the Attorney General, which had national, provincial and municipal branch offices. Various other institutions were also competent to receive complaints, claims and petitions from citizens. For example, all ministries had offices that provided services to the public, as did the National Assembly of People's Power, the Council of Ministers, the Council of State, provincial assemblies and other public agencies. In 2014, the Attorney General's Office had set up a hotline to facilitate receiving complaints and legal questions from the public and, in 2015, an interactive web portal for citizens had been launched. Persons deprived of their liberty also enjoyed the right to submit complaints. For all those reasons, the Government had not considered it necessary to make the declarations provided for under articles 31 and 32 of the Convention. That said, it should be noted that Cuba engaged continuously in studying questions related to the international treaties to which it was a party.

26. With regard to the other international instruments that the Committee considered the most important for States parties to ratify, he recalled that Cuba was a party to more than two thirds of the core international human rights instruments, which placed it among the top countries in the world in terms of the number of such ratifications. Cuba would continue to exercise its sovereignty in deciding whether or not to ratify the remaining treaties when the conditions relating to the actions of the Cuban Government in the sphere of human rights were not subject to political manipulation and singularization. Nevertheless, the fact that Cuba had not ratified certain international instruments did not preclude it from respecting their letter and spirit. That was the case, for example, with the two International Covenants of 1966 relating respectively to civil and political rights and to economic, social and cultural rights. The rights set out in those instruments were guaranteed, protected and allowed full exercise within the Government's institutional structure; moreover, Cuba engaged in considerable efforts to ensure that those rights were respected in other parts of the world by means of its international cooperation in human rights.

27. In response to the Committee's recommendation that Cuba should set up a national human rights institution, he wished to point out that the broad participatory and inter-institutional system that Cuba had established for the protection of human rights worked very well, as evidenced by feedback from citizens. The Government therefore did not consider it necessary to set up such an institution at the current time. The model that was based on the Paris Principles was not the only viable model; rather, each country was entitled to determine independently which model was best suited to protecting human rights in its territory, taking into account its particular situation.

28. **Ms. Vasallo Olivera** (Cuba) said that Cuba took the ratification of international conventions as a serious responsibility, which involved bringing its national legislation into line with the commitments it had made. To that end, the introduction of guidelines on economic and social policy in 2011 had led to the establishment of a working group consisting of legal and other experts to conduct an analysis and evaluation of the country's legislation with a view to aligning it with international conventions, including in respect of enforced disappearance. It was worth noting that national legislation reflected the country's historical development and, since enforced disappearance had not been a problem in Cuba, it had not been defined in law as a crime prior to ratification of the Convention. However, although enforced disappearance itself was not yet explicitly included in criminal law,

elements of it were addressed in a range of legal provisions covering, for instance, attacks on private freedoms or the integrity of the person.

29. As a result of its revolutionary origins, the country's legal system put particular emphasis on popular participation. Alongside professional judges, there were also lay judges, who were not legal professionals but joined the administration on the basis of their life experience. Judges were selected by the Assemblies of People's Power at different levels; the justices on the Supreme Court were selected by the National Assembly and, hence, were completely independent of the Government. On handing down a sentence, all judges were required to provide an explanation of their reasoning. The decisions of the Supreme Court were definitive. The Governing Council had regulatory capacities under the Constitution and could provide clarification or interpretation to avoid any problems in the application of the law, but it could not intervene in an individual case. Any judge suspected of not being independent was required to recuse himself or herself.

30. In respect of the four cases of habeus corpus that had been upheld, three of the individuals concerned had been imprisoned in 1990 or 1991 and had then escaped. They had been caught and sent back to prison in 2013 or 2014 to serve their sentences. The other case concerned a convicted prisoner who had been kept in prison instead of being transferred to hospital for medical treatment because the court order had not been properly recorded.

31. **Mr. Escandón Carro** (Cuba) said that the independence of criminal investigations, including in possible cases of enforced disappearance, was ensured under the Code of Criminal Procedure. The police and the criminal investigation and operations body of the Ministry of the Interior, together with the Office of the Attorney General, were responsible for criminal investigations, the latter serving as guarantor both of the rights of the accused and the victim and of the interests of the State and society. The Military Criminal Procedure Act covered the investigation of offences committed by military personnel or in military zones, which were subject to military jurisdiction, although it was both permissible and common for the military authorities to transfer cases to the civilian courts when they saw fit. In respect of the statute of limitations, the Criminal Procedure Act gave different starting points for the term of limitation, but crimes against humanity, which could cover enforced disappearance in the case of genocide, were by their nature not subject to any statute of limitations.

32. Superior orders could not be used as a defence, as the Criminal Procedure Act provided that all persons were obliged to report any criminal acts to the authorities. Hence, superiors were required to report any illegal acts, including enforced disappearance, by their subordinates, and subordinate officers could not claim superior orders to escape responsibility for such acts. If there was any suspicion during an investigation that a member of the investigating team was involved in an offence, he or she would be removed from his or her post and suspended until the investigation was complete. Protection for witnesses was available through the filing of complaints. One third of the over 124,000 complaints submitted to the Attorney General's Office the previous year had concerned legal proceedings. Furthermore, article 142 of the Criminal Code provided that protection must be given to any person who had suffered harassment as well as to his or her family.

33. **Mr. Rodríguez Rojas** (Cuba) said that, if a state of emergency were to be declared for reasons of a natural disaster, the relevant law ensured that human rights and the guarantees afforded against enforced disappearance both nationally and in international treaties would be maintained.

34. **Mr. Pedroso Cuesta** (Cuba) said that there was no definition of enforced disappearance in the State party's legislation because it had entered international law only relatively recently compared to the crimes of genocide and apartheid; that absence did not in any way indicate that the offence was not taken seriously. As concerned such crimes committed before 1959, the main perpetrators had emigrated to the United States of America and the absence of diplomatic relations with that country meant that Cuba had not been able to bring them to justice.

35. **Mr. López Ortega** said he would be interested to hear if the State party was intending to ratify the Rome Statute of the International Criminal Court and whether a

Cuban national whose extradition had been requested by another country could be prosecuted in the State party. Noting that the legal reform process had been initiated in 2011, he would like to know if any substantive changes had been introduced since then. Had any reforms been introduced as a result of the recommendation made by the Committee against Torture in 2012 concerning the independence of the judiciary? He would welcome further details on, for instance, regulations guaranteeing that independence. It was interesting to note that the Act on the Governing Council of the Supreme Court provided for that non-legislative body to issue general instructions, something that was not seen in other legal systems. Another unusual feature was that the Minister of Justice or the Attorney General could be invited to its meetings. Furthermore, while legal systems in other countries provided for lay persons to be appointed on a random basis to juries, lay judges in Cuba were appointed by organizations, such as workers' organizations.

36. While the delegation seemed to be of the opinion that no substantive institutional reforms were necessary because of the specific situation in the country, he recalled the need for standardization of practices among States parties that had undertaken to introduce the global vision of human rights into their societies, and hence for ratification of the international treaties. Emphasizing that the death penalty should in any case be avoided in sentencing, he asked whether the State party was considering any reforms in that respect.

37. **Mr. Figallo Rivadeneyra** said that, given the existence of efficient mechanisms for dealing with complaints, as explained by the delegation, it would seem that Cuba was already in a position to make the declaration under article 31 of the Convention. In respect of an individual involved in an investigation being suspended from that investigation on suspicion of offences related to enforced disappearance, it was important to note the difference between prosecutors, who had a certain degree of autonomy, and officers of the police force or the Ministry of the Interior, where such a suspension could be interpreted as a threat to the whole unit.

38. He recognized that fundamental rights were non-derogable during a state of emergency, but wished to know whether the right to a prompt and effective judicial remedy would be maintained under the applicable regulations. He would welcome more information on the implementation of provisions of the Criminal Code under which public and military officials were exempted from the obligation to report criminal activities if that would violate their professional secrecy.

39. **Mr. Decaux** said that it was very important that all countries, whatever their national specificities, should include the standard definition of enforced disappearance, as found in articles 2 and 5 of the Convention, in their national legislation.

40. **Mr. Hazan** said that he would like to know how the State party would deal with a request for the extradition of a foreign national for a crime of enforced disappearance committed in another country, as it was not considered an offence under Cuban law. In respect of cases of enforced disappearance from before 1959, what had been done in respect of reparations for victims and in cases where the victim had still not been found?

41. **The Chair**, speaking as a member of the Committee, said that article 12 (4) of the Convention concerned not only the suspension of an alleged perpetrator but also the need to prevent members of the same unit or force participating in the investigation.

42. **Mr. Amorós Núñez** (Cuba) said that, although Cuba was not currently considering ratifying the Rome Statute of the International Criminal Court, it firmly believed in the Court's work and permitted no impunity for offences committed by State authorities. It was a party to 44 international human rights instruments and considered itself to be in the vanguard of the human rights movement. The issue of the death penalty was under review and there had been no executions in Cuba since 2003.

43. **Mr. Escandón Carro** (Cuba) said that there was a policy whereby any official suspected of an offence related to enforced disappearance was automatically suspended from his or her duties and would be subject to the procedure provided for in the internal regulations of the military or civilian unit or force; such suspension did not apply, however, to all the members of the unit or force. The legislation also stated clearly that the obligation to denounce such crimes took precedence over any vow of professional secrecy. In the

system for the submission of complaints, the Office of the Attorney General played the main role, but other authorities at all levels, even up to the National Assembly and the Council of Ministers, were empowered to consider such complaints, and all cases of violations of rights were subject to prompt and impartial investigations.

44. **Ms. Vasallo Olivera** (Cuba) said that, were the Cuban authorities to receive a request for the extradition of a foreign national who had committed a crime of enforced disappearance in another country, they would take account of the conduct that constituted the crime, rather than the name given to it, and extradition would thus be possible. In the case of a similar extradition request for a Cuban national, the person could be brought to trial in Cuba for the constituent crimes as defined in national law.

45. In respect of judicial independence, the legal system in Cuba was the result of a revolutionary process peculiar to the country and its development. There had never been any reports from the people of a need for a structural reform of the legal system. However, changes had been made to it in the past and she did not exclude the possibility of structural changes being made in the future, but the principle of maintaining the revolutionary origins of the system was important.

46. The Governing Council had regulatory, not legislative, powers, but it could provide clarification to assist in the application of specific parts of legislation when requested to do so. The review of the Criminal Code had been conducted according to a rigorous process of examination and consultation since 2011 and the working group had produced various versions of normative drafts since then. The review concerned a piece of fundamental legislation which would affect all areas of the national legal framework and entail revisions of many of them. A proposed text would be put to the National Assembly for consideration when appropriate.

47. **Mr. Pedroso Cuesta** (Cuba) said that the exercise was not simply a review of the country's criminal legislation but a constitutional reform aimed at updating the nation's economic and social model as well as bringing its legislation into line with the international instruments to which it was a party. However, there was as yet no specific time frame.

48. **Mr. Escandón Carro** (Cuba) said that a number of provisions of the Criminal Code could be used in cases involving enforced disappearance; they included provisions for aggravating factors, such as the death of the victim, and mitigating factors, such as where the victim was freed within three days without having suffered harm.

49. **Ms. Vasallo Olivera** (Cuba) said she recognized the need for the international definition of enforced disappearance to be included in national legislation. It was interesting to note that even the much broader wording adopted in some countries always included the definitions from international standards.

The meeting rose at 6 p.m.

United Nations CED/C/SR.200

International Convention for the Protection of All Persons from Enforced Disappearance

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Twelfth session

Summary record of the 200th meeting
Held at the Palais Wilson, Geneva, on Tuesday, 7 March 2017, at 10 a.m.

Chair: Mr. Corcuera Cabezut

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The meeting was called to order at 10.05 a.m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Cuba (*continued*) (CED/C/CUB/1; CED/C/CUB/Q/1 and Add.1)

1. *At the invitation of the Chair, the delegation of Cuba took places at the Committee table.*

2. **Mr. Figallo Rivadeneyra** (Country Rapporteur) said that it was his understanding that, although Cuban law did not appear to expressly guarantee the principle of non-refoulement in all cases of extradition, detention and surrender when there was a risk of the person concerned being subjected to enforced disappearance, the State party in fact had the discretion to apply that principle. He asked whether Cuban law explicitly provided for such guarantee and, if so, which authority was responsible for determining whether persons who were subject to one of the aforementioned measures were at risk of enforced disappearance in another State; what criteria were used to make that determination; and whether the related procedure was administrative or judicial in nature.

3. It would also be useful to know on what grounds a person could be arrested and placed in police custody; whether the mere fact of suspecting a person of having committed a criminal offence was sufficient to justify their arrest; whether police custody was generally seen as a substitute for administrative detention; and how offences committed against persons in police custody were dealt with. He asked why police officers had a period of 72 hours in which to impose precautionary measures when, under normal circumstances, police custody could not exceed 24 hours, and why it fell to police officers, and not to the prosecutor, to impose such measures. He enquired as to the exact duration of police custody and as to the circumstances in which a person might be held in police custody for more than 24 hours without precautionary measures being imposed.

4. While taking note of the information provided by the State party on the general training dispensed to law enforcement officers and members of the judiciary, he would like to know whether all public servants received training on human rights in general and on the Convention in particular; whether aspiring professional judges were examined on international human rights law as part of their competitive examination; and whether there were plans to provide lay judges with training on that subject.

5. Regrettably, the existing procedure for awarding compensation for harm or damage arising from unlawful conduct or acts did not appear to meet the requirements in terms of reparation for victims of enforced disappearance set out in article 24 of the Convention. He asked how the State party intended to remedy that shortcoming.

6. **Mr. López Ortega** (Country Rapporteur) said that it was his understanding that persons in police custody were brought before a judge when the investigative process had been concluded and charges had been brought against them. He would appreciate clarification on whether, prior to being brought before a judge, such persons were the responsibility of the prosecutor, who was authorized to order pretrial detention, if necessary. He asked whether the State party considered the public prosecution service, which was an accusatorial body, to be the most appropriate authority to order pretrial detention; whether it considered the police to be the most appropriate authority to impose precautionary measures; how long a person could be deprived of his or her liberty without being brought before a judge; and whether the judicial authorities were empowered to verify the lawfulness of the investigative process and deprivation of liberty.

7. He would like to know whether it was indeed the case that persons in police custody had no access to a lawyer from the time of their arrest until the moment when precautionary measures were imposed and whether there was a set period during which they could be assisted by a lawyer.

8. It would be helpful to know at what stage and by what means a detainee's family was informed of his or her arrest and whereabouts; whether family members were routinely informed of a detainee's transfer to another place of detention; whether there were circumstances in which authorities could delay sharing the aforementioned information with family members; whether there were protocols in place in all police stations and places

of detention to ensure procedural consistency; whether consular authorities were routinely informed when a detainee was a foreign national; and how often family members could communicate with or visit a detained relative.

9. The Committee was concerned that the information contained in the registers of persons deprived of their liberty did not appear to correspond exactly to the requirements set out in article 17 (3) of the Convention. He asked whether the State party planned to modify the content of its registers to ensure compliance with that article; whether registers were kept in all places where persons deprived of their liberty could be held; and whether the intentional failure to register a person deprived of his or her liberty constituted a criminal offence and, if not, whether there were plans to criminalize that act as part of the reform of the Criminal Code.

10. While Cuban criminal law defined offences related to the substitution of one child for another and trafficking in children, it did not cover all the offences defined in article 25 (1) of the Convention apparently because no such cases had ever been recorded in the State party. He asked whether the State party had considered incorporating all the offences defined in that article into its criminal legislation as part of the reform of the Criminal Code and whether there was a specific procedure for annulling unlawful adoptions, particularly those that had originated in an enforced disappearance.

11. **Mr. Al-Obaidi**, referring to paragraph 242 of the State party's periodic report (CED/C/CUB/1), asked whether there was a specific law establishing the mandate of the Ethics Committee and what measures were in place to prevent genetic material collected or transmitted as part of the search for a disappeared person from being used or made available for other purposes.

12. **Mr. Yakushiji**, noting that the Ministry of Justice ordered an expulsion only when a final ruling had been handed down, unlike in the case of a return, which could be ordered without a final ruling having been issued or even without proceedings having been initiated against the defendant, said that he would appreciate an explanation of the difference between an expulsion and a return in Cuban law and would like to know at what stage a person who was subject to return could invoke the principle of non-refoulement. It would also be helpful to receive statistical information on the number of appeals lodged against expulsion or return orders and the number of court orders provisionally suspending decisions taken by migration authorities following the entry into force of the Convention for Cuba. The delegation should also mention any cases in which the principle of non-refoulement had been invoked on the grounds that the expelled or returned person could be subject to enforced disappearance, torture or other similar ill-treatment.

13. **Ms. Janina** asked whether the State party sought and accepted diplomatic assurances that a person who was subject to extradition would not fall victim to enforced disappearance or torture upon arrival in another State when such concerns existed. She also wished to know more about the programmes in place to support women who found themselves in a precarious situation following the enforced disappearance of a spouse or other male breadwinner and about any other assistance that they received during the absence of the person in question.

The meeting was suspended at 10.30 a.m. and resumed at 10.50 a.m.

14. **Mr. Bodes Torres** (Cuba) said that the Criminal Code provided that foreign nationals who were being persecuted for having defended democratic principles or the rights of working people or for having fought for a just cause were not to be extradited. That provision was also borne in mind when determining whether individuals who were subject to extradition, expulsion or return might fall victim to enforced disappearance in another State; if such a risk was found to exist, the extradition, expulsion or return was not carried out.

15. Cuba had concluded a number of extradition treaties which gave the requested State the power to refuse an extradition request if there were substantial grounds for believing that the request had been submitted for the purpose of persecuting or punishing an individual on the grounds of his or her race, religion, nationality or political beliefs. Those treaties also empowered the requested State to call upon the requesting State to submit any

documentation that could assist it in deciding whether or not to grant the extradition. The Ministry of Justice was responsible for collating all documentation submitted and preparing a case file on the basis of which the aforementioned decision was made.

16. Case files were likewise prepared for individuals who were subject to expulsion, return or transfer. Before authorizing an extradition, expulsion, return or transfer, the competent authorities reviewed the individual's history, any allegations that he or she had made, the potential risks that he or she would face if one of the aforementioned measures were imposed and the human rights situation in his or her country of origin; as applicable, it also verified that the crime for which the individual had been sentenced in Cuba existed in his or her country of origin. A transfer, which entailed sending an individual to serve the remainder of his or her sentence back in his or her country of origin, could take place only if the individual gave his or her express consent; such consent was not required in cases of extradition, expulsion or return.

17. The Cuban courts could order the expulsion of a convicted foreign national as subsidiary punishment after the main sentence had been served. Under a procedure known as administrative expulsion, the Ministry of Justice could exceptionally order the expulsion of a convicted foreign national before the main sentence had been served. All decisions to grant an extradition, expulsion, return or transfer could be appealed before the courts. Once the appeals process had been exhausted, it was also possible to request a judicial review of the decision as a last resort.

18. The Directorate of Immigration and Status of Foreigners allowed persons whose application for refugee status was being considered by the Office of the United Nations High Commissioner for Refugees (UNHCR) to remain in the country for a period of 90 days from the time of entry; that period could be extended, if necessary, to give UNHCR more time to determine the person's status. Persons who were not granted refugee status by UNHCR were sent back to the country from which they had travelled to Cuba, unless there was good reason to believe that they would face persecution or that their life would be in danger. Such precautions helped reduced the risk of those persons falling victim to enforced disappearance.

19. The majority of the extradition treaties concluded by Cuba provided that extradition was inadmissible if the offence committed by the individual in question carried the death penalty in the requesting State. However, Cuba would consider granting such extradition requests if it received sufficient assurances that capital punishment would not be applied.

20. Since 2013, a total of 8 extraditions had taken place: 2 in 2013, 5 in 2014 and 1 in 2016. Over the same period, a total of 18 expulsions had been carried out: 3 in 2013, 7 in 2014, 6 in 2015 and 2 in 2017. As to transfers, 35 had taken place in 2013, 18 in 2014, 31 in 2015, 25 in 2016 and 1 in 2017.

21. **Mr. Quintanilla Román** (Cuba) said that, if a foreign national who was to be transferred to his or her country of origin to serve the remainder of a sentence imposed by the Cuban courts claimed that he or she could suffer human rights violations or that his or her life would be at risk or refused to give his or her consent, the transfer did not take place. The Foreign Nationals Act provided for the return of foreign nationals who were in an irregular migration situation to the country from which they had travelled to Cuba or to their country of origin, unless there were substantial grounds for believing that they would face persecution or that their life would be in danger. Cuba strictly adhered to the principle of non-refoulement and did not return foreign nationals in such cases.

22. Between 2013 and 2016, a total of 83 persons had been granted extensions of the initial 90-day period of stay while UNHCR continued to assess their refugee status.

23. It was important to note that the aforementioned extraditions, expulsions and transfers were not related to the commission of any of the offences prohibited by the Convention. If, after having reviewed the information available, the competent authorities judged there to be insufficient guarantees for the safety of the persons subject to extradition, expulsion, return or transfer, those measures were not imposed.

24. There were both undergraduate and postgraduate courses that included a module on international human rights law, and specific training on that subject was provided to

medical personnel, members of the judiciary, persons working with detainees and law enforcement officials. Professional judges were indeed examined on international human rights law as part of their competitive examination.

25. **Mr. Escandón Carro** (Cuba) said that, according to the Criminal Procedure Act, the police were under an obligation to arrest a person who had attempted to commit a criminal offence; had been caught in flagrante delicto; had violated the imprisonment or pretrial security measure imposed on him or her by fleeing; was accused of having committed an offence against State security; was accused of having committed an offence for which the penalty exceeded 6 years' imprisonment; was accused of having committed an offence that had caused alarm; or when there was good reason to believe that he or she would try to evade justice.

26. The Office of the Attorney General, the Directorate of Criminal Investigation and Operations and the National Revolutionary Police were all empowered to order the arrest of a person accused of having committed a criminal offence. In principle, the duration of police custody could not exceed 24 hours. If the police intended to keep the accused person in custody beyond that time limit, they were obliged to bring him or her before a judge. However, neither the police nor the judge was authorized to place the person in question in pretrial detention, as that could only be ordered by the prosecutor and depended on the seriousness of the offence. The majority of precautionary measures were imposed between 24 and 72 hours following the person's arrest; an additional 72 hours could be granted for seeking the prosecutor's approval for pretrial detention. Moreover, under the Criminal Procedure Act, the prosecutor was authorized to revise any of the precautionary measures imposed by the police, the Directorate of Criminal Investigation and Operations or the judge.

27. As a general rule, there needed to be preliminary evidence to suggest that a person had participated in the commission of a criminal offence before the competent authorities could order his or her arrest. Therefore, merely suspecting a person of having committed a criminal office was not sufficient to warrant his or her arrest and it was not customary to deprive persons of their liberty for investigative purposes.

28. Although judges were not directly involved in the investigative process, they were empowered, under the Criminal Procedure Act, to return the case file to the prosecutor if they observed that procedural formalities had not been respected during the investigation phase or that insufficient action had been taken either to determine the responsibility of the presumed perpetrator or to clarify the facts of the case. The prosecutor was then required to take steps to remedy the shortcomings observed by the judge. In addition, the People's Courts Act required judges to notify the Attorney General of any offences that came to their attention during the processing or consideration of judicial acts and trials.

29. The Office of the Attorney General had issued a decision intended to expedite the processing of cases where the defendant had been placed in pretrial detention. Such detention tended to last between 2 and 3 months, although in exceptional circumstances preliminary investigations could take more than 70 days. In 2016, processing times had exceeded 180 days in only 22 cases, all of which had concerned complex financial offences. The text of the aforementioned decision had been disseminated widely among prosecutors in an effort to speed up processing times across the country.

30. In accordance with the Criminal Procedure Act, detained persons had the right to name a defence lawyer as from when they received notification that precautionary measures were being imposed on them; at that point, the lawyer became a party to the proceedings and could submit evidence on the detained person's behalf. The lawyer was authorized, inter alia, to establish communication and meet with the client, review the contents of the preliminary case file and seek the revocation or revision of the precautionary measure in question. The Criminal Procedure Act also guaranteed the principle of the presumption of innocence and a defendant's right to make a statement, and it established the obligation for the competent authorities to submit all relevant evidence for the purpose of clarifying the facts of the case. Any statement taken from a defendant under duress was considered to be null and void and the offending officials were liable to prosecution.

31. All persons deprived of their liberty were entitled to inform a family member of their detention. In addition, the Criminal Procedure Act established the obligation of the police or the arresting authority to inform the family of a detainee of his or her arrest and whereabouts and to facilitate communication between them. The police or the arresting authority were also required to respect the physical integrity of persons deprived of their liberty and afford them access to medical care, if necessary. A report detailing the time and date of the arrest and the grounds for it, as well as any other relevant information, was prepared at the outset of police custody. The Office of the Attorney General was responsible for verifying compliance with the aforementioned procedural guarantees in places of detention.

32. **Ms. Vasallo Olivera** (Cuba) said that, to her knowledge, no expulsion orders had been appealed before the courts. The People's Supreme Court had issued several instructions in an effort to limit the use of pretrial detention as a precautionary measure. Those instructions established the obligation of the courts, once a person had served his or her minimum sentence in pretrial detention, to examine the possibility of revising the precautionary measure and, once the person had served his or her maximum sentence in pretrial detention, to order the immediate release of the detainee.

33. Although there had not been a single case of enforced disappearance in Cuba since the Revolution of 1959, individuals who had been missing from their home with no indication of their whereabouts for more than a year could be declared absent by a court. If a person was declared absent, he or she was represented by his or her spouse, if applicable, or otherwise by an adult child, a parent, a grandparent or a sibling. If three years passed with no indication from the missing person, he or she could be declared to be presumed dead. When a person was declared to be presumed dead, the interested parties could exercise the same rights that they would have had if the death had been certified medically, including in matters of family law and inheritance rights. Pension rights were guaranteed for the family members of a person declared to be presumed dead when the person had, inter alia, held an employment contract or had fulfilled the requirements for an old-age or disability pension but had not yet claimed it. A person missing following a natural disaster could be declared to be presumed dead six months after the event had occurred; that period was extended to one year if the person had disappeared during a military operation. If a person who had been declared absent or presumed dead was found alive, the court annulled the declaration of absence or presumption of death and ordered the restoration of his or her rights, the recovery of his or her property and the payment of the value of any property that had been transferred or sold. Any adoption arrangements entered into by the person in question were also restored.

34. Cuban law offered protection to any person who had suffered direct harm as the consequence of a wrongful act. Any person who suffered damage or injury at the hands of State officials in the performance of their duties had the right to claim and obtain appropriate redress or compensation from the legal entity concerned, regardless of whether action was taken against the offending official. In addition, any person who was held criminally liable also bore civil liability for the moral and material damage caused by the offence. The court declared civil liability and established its extent by applying the relevant provisions of civil law and directly enforced the obligation to compensate for injury and provide redress for moral damage. Injured parties were entitled to initiate *amparo* proceedings and to claim compensation if they believed that their procedural rights had been violated.

35. The Government believed that it was in the best interests of children whose parents had been subjected to enforced disappearance to remain in a family environment whenever possible and viewed adoption as a last resort on account of the negative impact that it could exert on a child's upbringing and development. Furthermore, it was legally impossible for an adoption to be granted as a result of an enforced disappearance, as the parents of the child would be unable to give their consent. Legally concluded adoptions that were subsequently found to have originated in an enforced disappearance could be annulled.

36. **Mr. Álvarez Valle** (Cuba) said that the Directorate of Criminal Investigation and Operations and the National Revolutionary Police both came under the authority of the Ministry of the Interior, which facilitated the collecting and sharing of data on persons

deprived of their liberty. Cuba had a computerized information and assistance system that contained details of all persons deprived of their liberty, including all the information listed in article 17 (3) of the Convention. The system, which was operated and maintained by well-trained personnel, provided authorized users, including in even the most remote areas of the country, with access to information on the whereabouts of persons deprived of their liberty.

37. All detained persons underwent a medical examination upon arriving at the police holding cell. Any detainee who was found to require medical treatment was transferred to the appropriate facility. The same procedure was followed by the staff of the Directorate of Criminal Investigation and Operations and the staff of the Directorate of Prisons.

38. Any person who died while in detention was by law examined by the Institute of Forensic Medicine, which certified the death. The family members of the deceased person were informed and invited to claim the body.

39. Registers of persons deprived of their liberty were kept in all prisons, police stations, criminal investigation units and in the country's only migrant detention centre. The conditions in that centre were in line with international standards and the migrants detained there were guaranteed access to consular assistance.

40. Cuban law required minors to be kept separate from adult detainees. In cases where both minors and adults were detained in the same facility, they were housed in different wings.

41. Responding to the question about the use and protection of genetic material, he said that in the majority of cases genetic samples were collected at the request of the criminal investigation authorities of other States. Cuba strictly followed the international protocols for collecting, storing, handling, transporting and tracking the delivery of genetic material.

42. **Mr. Pedroso Cuesta** (Cuba) said that the records of persons detained in prisons and other facilities contained all the information referred to in article 17 of the Convention.

43. **Ms. Pérez Álvarez** (Cuba) said that Cuba, in addition to being the first country to have signed the Convention on the Elimination of All Forms of Discrimination against Women, had been deeply involved in the negotiation of the Beijing Declaration and Platform for Action. A comprehensive system for the protection of women, which involved the State and civil society organizations such as the Federation of Cuban Women, had been in place throughout the country since the Revolution. A number of institutions, including the media, were involved in efforts to combat domestic violence. Every municipality in the country had a women's and family counselling centre to which victims of violence could turn for advice and assistance. Other public institutions provided similar services.

44. **Mr. Figallo Rivadeneyra** asked whether he had understood correctly that the courts intervened in extradition proceedings only when a decision by the Ministry of Justice to grant a request for extradition was appealed. He would welcome a clarification of the role and position of investigating officials, who could evidently order persons taken into custody by the police to be held for up to 72 hours before deciding whether to forward the case to one of the country's prosecutors, who themselves had another 72 hours to decide whether a given detainee should be held in pretrial detention. Confirmation that he had understood correctly that the country's courts did not intervene in that process would also be welcome.

45. The State party's authorities should bear in mind that article 24 of the Convention provided for forms of reparation complementary to those commonly awarded by the courts in findings against individual defendants. Such forms of reparation, including rehabilitation and guarantees of non-repetition, were generally obtained from the State.

46. **Mr. López Ortega** said that he wished to know whether persons could be assisted by a lawyer immediately upon being taken into custody. In addition, he would welcome information on how the family members of a detained person were notified of the person's whereabouts. It would be interesting to know, for instance, whether there were any countrywide protocols for notifying the family members of persons taken into detention or prisoners who were transferred from one of the country's prisons to another.

47. Although the registers of persons in detention in the State party evidently contained a wealth of information (CED/C/CUB/Q/1/Add.1, para. 67), it seemed that they did not include all the information specifically mentioned in article 17 (3) of the Convention. He wished to know whether the State party had considered encouraging independent organizations to take part in prison visits.

48. He did not wish to repeat himself, but Cuba should consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In connection with reparation, he wondered whether an individual who had suffered harm as the direct result of an enforced disappearance but who had been unable — because of the statute of limitations, for instance — to obtain a court judgment in his or her favour had any means of obtaining restitution, satisfaction or other forms of reparation.

49. He would welcome clarification of the legal status of missing persons in Cuba and in particular of how that status differed from the status of persons who were presumed dead. In that connection, he wondered whether the Cuban authorities were aware that the Committee was sceptical of the view that the practice of declaring missing persons dead was compatible with the Convention. It would also be interesting to know whether the programmes of study for aspiring judges covered the international human rights instruments to which Cuba was a party.

50. **Mr. Hazan** said that he wished to know what mechanisms were in place to ensure the independence of prosecutors, who, if he had understood correctly, were the officials responsible for dealing with cases of more serious crimes and issuing any pretrial detention orders. He wondered whether the State party's claim (CED/C/CUB/1, para. 23) that no violence or coercion was used to force detainees to make statements was not undercut immediately thereafter by the admission that persuasion and encouragement were used instead. Lastly, he requested a description of the State party's system of public legal aid, if indeed it had one.

51. **The Chair**, speaking as a member of the Committee, asked how easy it would be for a detained person to name private counsel of his or her choosing.

52. **Mr. Bodes Torres** (Cuba) said that a non-Cuban national whose extradition from Cuba was sought by a foreign country would be informed of the decision by the Cuban Ministry of Justice to grant the extradition request or deny it. Only after the request was granted could the person lodge an appeal with the courts.

53. **Mr. Escandón Carro** (Cuba) said that the Directorate of Criminal Investigation and Operations, including its investigating official, and the police were part of the Ministry of the Interior. In essence, Mr. Figallo Rivadeneyra had understood their roles correctly: namely, the police, who dealt with less serious offences, could hold a detainee for up to 24 hours before deciding whether to turn him or her over to the criminal investigation body, which for its part could hold the person for up to 72 hours before proceeding. Only the Attorney General's Office, which intervened at the request of the criminal investigation body, could order that a detainee should be held until his or her trial. The Attorney General's Office also oversaw investigations in their entirety to ensure their legality. The impartiality of investigating officials and prosecutors was ensured by the Criminal Procedure Act, which listed the grounds on which they could be recused from a given case.

54. Detainees were not necessarily assisted by a lawyer when they made their initial statements, as the right to counsel applied only after the imposition of a precautionary measure. The right to remain silent was fully respected and, as law enforcement officials observed in their daily work, detainees did not hesitate to exercise it.

55. Prisons in Cuba were routinely visited by persons and organizations independent of the prison administration and the Attorney General's Office. Those visitors included the family members of prisoners, non-governmental organizations, law students, clergy members and consular officials.

56. Defendants were free to name a lawyer of their choosing. They were also free to change lawyers at any point during the proceedings against them. No one could be tried without being represented by a lawyer.

57. **Ms. Vasallo Olivera** (Cuba) said that, as she had noted previously, the Convention enshrined the right to reparation for a phenomenon — enforced disappearance — that was not present in Cuba. Public institutions could nonetheless be required to compensate the victims of harm that had been done by public employees acting in their official capacity. In addition, the State, regardless of whether there were any legal requirements to offer such compensation, would compensate anyone who was unjustifiably harmed by a public official in the performance of his or her duties. In the event of a criminal conviction, the victims of an enforced disappearance could seek civil remedies. The family members of a person who had been declared missing could exercise the rights of the missing person for up to three years, at which point the person was presumed dead.

58. The competitive examinations for aspiring judges always included questions on international human rights instruments and how they pertained to criminal, non-criminal and labour law. In addition, the programmes of study to prepare students for those examinations invariably had a module on those instruments. Judges throughout the country were duly informed of any instruments newly ratified by the State. In many cases, judges had referred to the instruments to which Cuba was a party in their findings. By late 2016, all the country's judges had received training in connection with international human rights instruments.

59. **Mr. Álvarez Valle** (Cuba) said that in the Cuban system, a detainee's family members played an important role from the outset of detention. They were contacted by telephone; telegrams were used only very rarely, as newer technologies were more effective. Having the police and the Directorate of Criminal Investigation and Operations in the same ministry facilitated information sharing and thus made it easier to keep a detainee's family members abreast of his or her whereabouts. The authorities identified the person who would take custody of the property of any detainee who did not have a family.

60. In Cuba, it was uncommon for a prisoner to be transferred from one prison to another. In fact, only 15 per cent of prisoners were serving their sentences in prisons outside their home province. The family members of any transferred prisoners were duly informed of the transfer. In addition, any prisoner scheduled to be transferred was informed of the upcoming transfer and, like all prisoners in Cuba, was entitled to a daily telephone call.

61. A procedure for registering detentions was followed. It began with the issuance of a certificate of detention that contained relevant information about the person being taken into detention. Additional information, including that mentioned in article 17 (3) of the Convention, was entered into the person's records to reflect changes in the status or progress of any legal proceedings. The name of the person authorized to make conjugal visits was also indicated in the person's records.

62. The Cuban prison system made every effort to rehabilitate prisoners. Occupational training was provided in the prisons, and a system of maximum-, medium- and minimum-security facilities was being put in place, in part so that prisoners could move from one to the other as their release date neared.

63. In Cuba, arrests were not made as part of conducting an investigation. They were made only after an investigation had been conducted. There was therefore no reason to coerce detainees into making statements. Most investigative officials in Cuba held university degrees.

64. **Mr. Quintanilla Román** (Cuba) said that Cuban prisons were also visited by well-known artists, social workers and foreign diplomats posted to Havana. In addition, the Cuban authorities had a good working relationship with the International Committee of the Red Cross.

65. **Mr. López Ortega** said that even in countries such as Cuba, where enforced disappearance was not a problem, there was room to improve efforts to implement the Convention. Cuba, for instance, could take advantage of the planned reform of its Criminal Code to define enforced disappearance as a specific offence. In its concluding observations, the Committee was likely to address the need for Cuba to take measures to guarantee the

rights of detained persons and to develop means for victims to obtain reparation that did not necessarily involve the courts.

66. Lastly, he wished to stress the importance of ratifying all the international human rights instruments that were closely linked to the Convention, including the Rome Statute of the International Criminal Court, the Optional Protocol to the Convention against Torture and the International Covenant on Civil and Political Rights. Cuba should also recognize the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction. The Cuban authorities should not take the Committee's insistence in that regard as a harsh assessment of the Cuban system. It was instead an invitation, extended to all States with exemplary human rights records, to serve as an example.

67. **The Chair** said that the State party had 48 hours following the closure of the meeting to provide supplementary information.

68. **Mr. Pedroso Cuesta** (Cuba) said that the issue of signing binding international legal instruments was a matter of national sovereignty. Cuba would consider the advisability of ratifying the International Covenant on Civil and Political Rights and other human rights instruments, some of which it had signed, when human rights were no longer politicized and when the issue was no longer used as an instrument of demonization. It was no coincidence that a number of States were considering withdrawing from the International Criminal Court.

69. Although Cuba had developed safeguards to prevent enforced disappearance and other conduct covered in the Convention, the authorities were aware that there was still much to be done, in particular, as the Country Rapporteur had noted, in connection with criminalizing enforced disappearance. Cuba was willing to act on the recommendations to be made by the Committee and would continue to perfect the practices that, since the Revolution, had enabled the Cuban people to exercise their rights to life and liberty.

The meeting rose at 12.55 p.m.